# REMARKS

Claims 1 – 14 are in the application. Claims 1, 10, and 14 are currently amended; claims 4, 7, and 12 were previously presented; and claims 2, 3, 5, 6, 8 – 11, and 13 remain unchanged from the original versions thereof. Claims 1, 10, 12, and 14 are the independent claims herein.

No new matter has been added to the application as a result of the amendments submitted herewith. Reconsideration and further examination are respectfully requested.

## Claim Rejections – 35 USC § 103

Claims 1 – 9 and 12 – 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Statement of Financial Accounting Standards No. 133, accounting for derivative instruments and hedging activities by Edmund L. Jenkins (hereinafter, Jenkins Nov, 1998. Vol. 186, Iss. 5; 12 pages) in view of Wallman, U.S. Patent No. 6,360,210. This rejection is respectfully traversed.

Applicant respectfully submits that the cited and relied upon Jenkins is the Statement of Financial Accounting Standards No. 133 (SFAS 133). As such, Jenkins is written to serve as a standard or guiding document for the accounting of derivative instruments and hedging activities. Furthermore, various terms and principles having specific meanings within the financial industry, as especially related to derivatives and hedging instruments, have specific meanings within Jenkins as defined and used in Jenkins.

Applicant notes that the Office cites and relies upon Jenkins for disclosing "a hedge accounting method implemented by a programmed computer system for reducing periodic earnings volatility associated with a hedged exposure, the method comprising: processing data and instructions on the computer to account for a financial exposure of an associated hedging instrument by designating for accounting purposes a

portion ("i.e., percentage") of the value of the financial exposure as being hedged by the hedging instrument, (see page 9-12 of paragraph 18-22) the designated portion being based on a delta ("i.e., relationship between option price and underlying futures contract or stock price") of the hedging instrument representing a price sensitivity of the financial exposure with respect to changes in market value ("i.e., fair value") of an underlying instrument (see page 9-12 of paragraph 18-22); and in each of a plurality of sequential periods ("i.e., future periods "see page 16 paragraph 31") and for accounting purposes of the portion of the financial exposure being hedged by the hedging instrument based the delta of the hedging instrument, to reduce periodic earnings volatility associated with a hedging transaction."

Applicant respectfully submits that the rejection of claim 1 is not obvious under 35 USC in view of Jenkins and Wallman as a matter of fact since the cited and relied upon references fail to disclose or suggest that which they are cited and relied upon for disclosing/suggesting, let alone that which is claimed by Applicant.

First, Applicant submits that the claimed "delta" of the hedging instrument "representing a price sensitivity of the financial exposure with respect to changes in market value of an underlying instrument" is not the same as or suggested by the *fair value* term disclosed by Jenkins and relied upon by the Office. Specifically, Jenkins states that the term *fair value* therein is related to a derivative and refers to the "gains or losses" of the derivative. (See Jenkins, page 9, paragraph 18, line 1) The disclosed term fair value is explicitly defined by Jenkins. Additionally, the claimed "delta" is disclosed and defined at page 5 of the Specification and claimed in a manner consistent with same. That is, there is no support in Jenkins for the Office's continued argument that the claimed "delta" is the same as of analogous to the Jenkins' *fair value.*

Thus, it is clear that the claimed "delta" <u>is not the same as or suggested by</u> the relied upon *fair value*.

Next, Applicant notes that the *future periods* cited and relied upon by the Office for allegedly disclosing the claimed "plurality of sequential periods" explicitly relates the

classification of accumulated other comprehensive income (OCI). Therefore, the Jenkins disclosed *future periods* does not relate to any claimed designation or dynamic re-designation of the portion of the financial exposure being hedged by the hedging instrument. Further, the Jenkins disclosed *future periods* is related to the classification of accumulated OCI as earnings, unlike the claimed "plurality of sequential periods" related to the process of dynamically re-designating the portion of the financial exposure being hedged by the hedging instrument based on the delta of the hedging instrument.

Thus, it is clear that the claimed "plurality of sequential periods" <u>is not the same as or suggested by</u> the cited and relied upon *future periods*.

Applicant incorporates the arguments of record and reiterates that disclosure of an initial documentation of the hedging relationship and the entity's risk management at inception by Jenkins (See Jenkins, page 10, paragraph 20. a.) does not disclose, suggest, or teach the claimed dynamic re-designation of the portion of the financial exposure being hedged by the hedging instrument based on the delta of the hedging instrument. This is true since the Jenkins disclosed initial documentation explicitly relates to the <u>fair value</u> (i.e., losses and gains) and effectiveness of the hedging instrument. No disclosure, explicit, implicit, inherent, or otherwise, is made regarding any re-designation of the portion of the financial exposure being hedged by the hedging instrument based on the delta of the hedging instrument.

Thus, while the Office admits that Jenkins fails to explicitly teach the claimed re-designation Applicant respectfully submits that Jenkins, alone and combined with Wallman, fails to even suggest or provide a sufficient basis that the claimed re-designation is obvious in view of Jenkins and Wallman.

Applicant respectfully submits that the asserted combination of Jenkins and Wallman fails to overcome the insufficient disclosure of Jenkins. That is, even if Jenkins were combined with Wallman as asserted by the Office Action (not admitted as feasible by Applicant), the combination fails to render the claim 1 obvious under 35 USC 103(a) for at least the reasons discussed in detail above. Again, Jenkins fails to disclose or

suggest that for which it is cited and relied upon for disclosing and there is no support for the obviousness conclusions argued in the Office Action.

Claims 2 – 9 depend from claim 1. The Office Action rejected claims 12 - 14 on the same basis and rationale provided regarding claim 1. Claims 10, 12, and 14 are, in relevant part, similar to claim 1. Accordingly, Applicant respectfully submits that claims 1 – 9 and 12 – 14 are patentable over the cited combination of Jenkins and Wallman under 35 USC 103(a).

Claims 10 and 11 were also rejected as being unpatentable over Jenkins in view of Wallman. This rejection is traversed.

Applicant respectfully submits that claims 10 and 11 are patentable over the cited combination of Jenkins and Wallman under 35 USC 103(a) for at least reasons similar to those provided regarding claim 1.

Thus, it is clear that the reasoning provided by Applicant hereinabove regarding claim 1 is applicable and sufficient to rebut the rejection of claims 10 and 11. Accordingly, Applicant respectfully submits that claims 10 and 11are patentable over the cited combination of Jenkins and Wallman under 35 USC 103(a).

## CONCLUSION

Accordingly, Applicants respectfully request allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-5985.

Respectfully submitted,

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Date

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